IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-01-2006

CORAM

THE HONOURABLE MR. JUSTICE P.JYOTHIMANI

Writ Petition No.9899 of 1998

Murugesan ... Petitioner.

Vs

1. The Manager, R.C.Schools,
   Bishop of Tuticorin,
   Turicorin Diocese,
   Bishop's House,
   Turicorin.

2. The Superintendent of R.C.Schools,
   Bishop's House,
   Tuticorin.

3. The Correspondent,
   R.C.Middle School,
   Nedunkulam,
   Sathankulam Taluk,
   Tuticorin District. ... Respondents.

Prayer:- Writ petition filed under Article 226 of the Constitution of India to issue writ of certiorarified mandamus praying for the relief as stated therein.

For Petitioner : Mr.D.Hari Paranthaman

For Respondents : Mr.S.Mahimairaj.

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O R D E R

This writ petition is filed challenging the order of the first respondent dated 29.05.1998 terminating the petitioner's services and also for a direction to reinstate him with backwages, continuity of service and other benefits.

2. The case of the petitioner is that he joined as a regular Secondary Grade Teacher in the Tuticorin Diocese on 18.10.1973, having worked for three years prior to the said date as a substituted

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teacher under various schools within the control of the Diocese. The Diocese is having 122 Primary Schools, 70 Middle Schools, 8 High Schools and 16 Higher Secondary Schools in Tuticorin, Tirunelveli and Kanyakumari Districts and all the Schools are aided by the Government of Tamil Nadu and the Schools are governed by the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and Rules made thereunder. It is the further case of the petitioner that he was awarded Selection Grade on completion of 10 years and Special Grade after completion of 20 years of service and he has put in 25 years of unblemished record of service. The petitioner states that one Rev.Father Augustine, who was a Priest of Kadakulam Parish, disliked him due to the reason that the petitioner used to question the activities of the Priests, and he was also transferred from R.C.Middle School, Chidambarapuram, to R.C.Middle School, Nedungulam. The petitioner further states that apart from being the Priest of Nedungulam Parish, the said Rev.Father Augustine was also the correspondent of R.C. Middle School, Nedungulam and he attempted to dismiss the petitioner, while he was working at that time and it is with that view, he procured a complaint dated 28.07.1997 from two members of Nedungulam Church, viz., Mr.G.Selvan and V.Selvaraj, alleging that the petitioner has abused the school when he was talking to one Sargunaraj, a retired Headmaster. The petitioner states that when there was an enquiry, the said Sargunaraj sent a letter refuting the allegations made against the petitioner, which also developed an inimical attitude in the mind of Rev.Father Augistine to victimise the petitioner at any cost. The petitioner further states that when the petitioner was on medical leave between 29.07.1997 to 25.09.1997 for 59 days, there was a demand made to him to pay Rs.800/- per month for sanctioning of the medical leave, which was refused by the petitioner, and thereafter, a charge sheet was issued against the petitioner on 20.09.1997 by the Correspondent based on a complaint dated 10.07.1997. The petitioner states that the petitioner was suspended on 21.11.1997 on the basis that he deliberately refused to receive the charge sheet dated 20.09.1997, which resulted in the return of the cover as "not claimed", and the charge memo dated 20.09.1997 contained the charges that the petitioner was not in the habit of going to the classes in time, that the petitioner was in the habit of acting against the regulations and at his own whims and fancies and that the petitioner was not taking classes properly. According to the petitioner, a letter dated 07.11.1997 was sent to the petitioner informing him that he has deliberately returned the cover as "not claimed".

3. The petitioner sent a reply on 27.11.1997 refuting all the charges. The petitioner has also sent a document, viz., Teaching Grant Advise, to show that the school was illegally deducting an amount from the salary as "Cess".

4. Enquiry was conducted, in which, one Mr.Kasi was appointed as an Enquiry Officer, and in the said enquiry, three students were examined and according to the petitioner, no one of the students have

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ever implicated the petitioner in any one of the charges. Therefore, the enquiry officer has not recorded their statements, which was objected to by the petitioner. In the said enquiry, four persons, who stated to have signed the complaint, were examined on the side of the School, out of whom, Mr.V.Selvaraj and G.Selvan were among them. According to V.Selvaraj, his elder son is studying in 10th standard in Sathankulam and his younger son is studying in 4th standard, to whom, the petitioner did not teach properly.

5. The case of the petitioner is that he was taking classes only from 5th standard to 8th standard and he had no occasion to teach the younger son of Selvaraj, who is studying in 4th standard, and therefore, there was no question of Selvaraj stating about the petitioner either not taking classes properly or not going to the classes in time. In respect of the other person, viz., G.Selvan, the petitioner states that none of his son is studying in the said school. It is also the case of the petitioner that the complaint preferred by another witness V.Susaimani against the petitioner based on the statement of his son studying in 4th standard, is also not relevant, since the petitioner was not taking classes in 4th standard. According to the petitioner, in any event, there was no particulars about any such allegations and the enquiry officer was biased and he gave a report dated 07.03.1998 holding the petitioner guilty of all the three charges. Based on the said finding, the petitioner was dismissed from service by an order dated 29.05.1998. It is against the said dismissal order, the petitioner has filed this writ petition before this Court since his right of filing appeal under the Tamil Nadu Recognised Private Schools (Regulation) Act does not apply against the minority schools.

6. The second respondent has filed a counter affidavit on behalf of both respondents 1 and 3 denying the various allegations raised in the writ petition. According to the respondents, apart from claiming privilege as a minority institution under Article 30(1) of the Constitution of India, they denied the fact that Rev.Father Augustine was having any ill-will against the petitioner. It is also denied that the petitioner has given 100% result in his classes. It is also stated that the enquiry officer has conducted the enquiry properly by giving reasonable opportunity to the petitioner. It is also stated in the counter affidavit that the charges levelled against the petitioner were,

1. The teacher Thiru. Murugesan was not doing his teaching duty properly by attending classes in time;

2. Thiru. Murugesan was acting according to his whims and fancies without following the instructions by his superior authorities;

3. Thiru. Murugesan was not teaching in the classes;

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4.Thiru. Murugesan was in the habit of refusing to receive the communication from the management;

and the Enquiry Officer has arrived at a conclusion that the petitioner was guilty of the charges except in respect of the first charge, which is to the effect, as to whether the petitioner was teaching in the classes given to him.

7. I have heard the learned counsel for the petitioner and also the counsel for the respondents.

8. Before going to the merits of the case about the various witnesses, as elaborately argued by the learned counsel for the petitioner, this Court is of the view that the petitioner is given an opportunity to ventilate his grievances here for the reason that he has no appeal remedy under the Tamil Nadu Recognised Private Schools (Regulation) Act. That does not mean that this Court, exercising jurisdiction under Article 226 of the Constitution, can make roaming enquiry about the minute details of the domestic enquiry. Suffice it to say, prima facie, it has to be found out as to whether there is any bona fide in the charges framed, the enquiry conducted and the decision arrived at.

9. At the outset, if one looks into the charges framed against the petitioner, it is seen that they are relating to his way of taking classes by stating that the petitioner was not in the habit of going to the class room in time and taking classes properly. The said charges mostly relate to the teaching of the Secondary Grade Teacher in the School, which comes under the control and supervision of the Headmaster. Nowhere it is found in this case that the Headmaster has made any complaint about the petitioner at any point of time. If at all the teacher was not taking classes properly, it was not only the primary duty and responsibility of the Headmaster to see that classes are taken in a proper manner, but it was he, who was the proper person to have made a complaint. Therefore, prima facie, I am of the view that the charges levelled against the petitioner are without any substance. That apart, as pointed out by the learned counsel for the petitioner, even the witnesses, who spoke about the petitioner in not taking classes properly, are the parents of students, who were studying either in the 4th standard or so on, to whom, admittedly, the petitioner was not taking classes and as per the affidavit filed in support of the petition, it is the case of the petitioner that he has been taking classes only between 5th and 8th standard, which has not been denied by the respondents in the counter affidavit. Therefore, I am of the view that prima facie, the charges framed against the petitioner are baseless. There is one more point that when, among the four charges, the first charge, viz., that the teacher, Thiru.Murugesan was not doing his teaching duty properly by attending classes in time, is the basic charge and admittedly, the enquiry officer has exonerated the petitioner from the said charge. The second charge is only relating to the allegation that the

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petitioner was acting at his own whims and fancies without following the instructions by the superiors. In this case, there is absolutely no evidence at any place to show that the superiors have issued any directions and therefore, the second charge is bald. As far as the third charge that the petitioner was not teaching in the class room, it cannot also be sustained. The last charge, which remains to be considered, is that the petitioner was in the habit of refusing to receive any communication from the management. The returning of the cover through which the charge sheet was sent by the respondent to the petitioner as "not claimed" cannot be taken as a very serious charge, especially when the petitioner has given an explanation saying that he does not know anything about the letter at all. Therefore, the charges framed against the petitioner failed and consequently, there is absolutely nothing for the respondent to proceed against the petitioner. It is also now informed that in the usual course, the petitioner would have attained the age of super-annuation in the year 2005, but for the order of dismissal dated 29.05.1998.

10. Considering the totality of the situation, this Court is of the further view that in any event, the petitioner cannot be reinstated now, since he has attained the age of super-annuation and the only question that remains to be considered is, to what relief the petitioner is entitled to in the circumstance that the charges, on the face of them, are baseless.

11. Considering the circumstance that the petitioner has served the respondents' Institution for the past 25 years with an unblemished record of service and also the fact that admittedly, from the year 1998 the petitioner has not served the Institution till date, this Court is of the view that the respondent should be directed to pay 60% of the salary due to him from the date of his dismissal till the date of attainment of the age of super-annuation.

12. With the result, the writ petition is allowed. The impugned order of the respondent dated 29.05.1998 is set aside and the respondents are directed to pay 60% of the salary due to the petitioner from the date of his dismissal till the date of his attainment of the age of super-annuation, which amount shall be computed and paid to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. There will be no order as to costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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+ One CC to M/S.S.Mahimai Raj, Advocate Sr.No.693.

AVM (CO)
RSM/9.1.2006

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